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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/028,225	12/18/2001	Gerhard Engel	DE920000112US1	3157
26502	7590	11/23/2005	EXAMINER	
IBM CORPORATION IPLAW IQ0A/40-3 1701 NORTH STREET ENDICOTT, NY 13760			PHILLIPS, HASSAN A	
			ART UNIT	PAPER NUMBER
			2151	

DATE MAILED: 11/23/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/028,225

Applicant(s)

ENGEL ET AL.

Examiner

Hassan Phillips

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 07 September 2005.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-20 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-20 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☒ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____

DETAILED ACTION

1. This action is in response to communications filed on September 7, 2005.

Oath/Declaration

2. Examiner acknowledges Applicants are in the process of obtaining a new declaration from the inventors and will forward the newly executed declaration to the patent office in due course.

Response to Arguments

3. Applicant's arguments have been considered but are moot in view of the new ground(s) of rejection.

Claim Rejections - 35 USC § 102

4. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

5. Claims 9-11, 20, are rejected under 35 U.S.C. 102(e) as being anticipated by Young et al. (hereinafter Young), U.S. Patent 6,966,060.

6. In considering claim 9, Young teaches a software distribution system for remote distribution/installation of computer programs from a source data processing system to at least one target data processing system based on at least two distribution/installation modes, wherein the computer programs are transferred as packages which are identified in a package list, the system comprising a queue manager which includes a request queue and an active queue for handling the remote distribution, (see Abstract, col. 2, lines 21-64, Fig.'s 6-7).

7. In considering claim 10, Young teaches means for checking if a pre-specified time is exceeded, (col. 10, lines 9-31); means for checking if the active queue is overloaded and, if not, for setting the request into the active queue, (col. 2, lines 21-52, col. 9, line 61-col. 10, line 8).

8. In considering claims 11, 20, Young teaches the queue manager comprising means for checking if a current target data processing system is already active and, if not, for setting the request into the active queue, (col. 2, lines 21-52, col. 9, line 61-col. 10, line 31).

Claim Rejections - 35 USC § 103

9. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

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(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

10. Claims 1-8, 12-19, are rejected under 35 U.S.C. 103(a) as being unpatentable over Young.

11. In considering claims 1 and 6-8, Young teaches a method, system, data processing program for execution in a data processing system, and computer program product stored on a computer usable medium, for remote distribution/installation of computer programs from a source data processing system to at least one target data processing system based on at least two distribution/installation modes, comprising: checking if the at least one target data processing system is available, (col. 2, lines 21-35); performing distribution/installation according to one of the at least two distribution/installation modes, if the at least one target data processing system is available, (col. 2, lines 21-64); monitoring if the distribution/installation is successful, (col. 2, lines 21-52).

Although the teachings of the Young disclose substantial features of the Applicants claimed invention, they fail to expressly disclose: switching the modes of distribution/installation if the distribution/installation is not successful.

Nevertheless, Young suggests the distribution/installation may be unsuccessful for reasons such as improper security rights, (col. 2, lines 27-34). Young also suggests one of the at least two distribution/installation modes occurring when a user logs on and

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has the proper security rights that the alternate distribution/installation mode failed to have, (col. 2, lines 53-64).

Thus, if not implicit in the teachings of Young, it would have been obvious to one of ordinary skill in the art to modify the teachings of Young to disclose switching the modes of distribution/installation if the distribution/installation is not successful. This would have advantageously provided alternate means for a user to remotely obtain distribution/installation programs in case one mode of distribution/installation was unsuccessful, (Young, see abstract).

12. In considering claims 2, 16, 18, the teachings of Young provide a means for pre-specifying attempt numbers for retrying a push-mode distribution and a pull-mode distribution, (col. 2, lines 21-35); retrieving a next package identified in the package list (112), (col. 7, line 51- col. 8, line 6, also see Fig.'s 6-7); checking if the at least one target data processing system is available, (col. 2, lines 21-35); if the at least one target data processing system is available then starting installation of the package on the target data processing system, (col. 2, lines 36-45); otherwise, if at least one push-mode attempt is left, resuming and rescheduling a next push-mode distribution and, if no push-mode attempt is left, but at least one pull-mode attempt is left, resuming and rescheduling a next pull-mode distribution, (col. 2, lines 21-35).

13. In considering claims 3, 17, 19, the teachings of Young provide a means for if the number of push retries is greater than 0, moving a distribution/installation request

into a hold queue and scheduling re-insertion of the request into a request queue, (col. 2, lines 21-35); if the number of push retries is equal to 0 and the number of pull retries is greater than 0, moving the request into a pull queue and restarting when the target computer system logs in, (col. 2, lines 21-35, col. 2, lines 53-64); if the number of push retries is equal to 0 and the number of pull retries is equal to 0, moving the request into an abort queue, (col. 10, lines 9-31).

14. In considering claims 4, 12, 13, the teachings of Young provide a means for queuing a distribution/installation request in a request queue and setting the distribution/installation request into an active queue when a pre-specified time is exceeded, (col. 2, lines 21-52, col. 10, lines 9-31).

15. In considering claims 5, 14, 15, the teachings of Young provide a means for detecting an active queue overload and checking if a currently selected target data processing system is already active, (col. 2, lines 21-52, col. 9, line 61-col. 10, line 31).

Conclusion

16. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Slivka et al. U.S. Patent 6,049,671 – discloses remote distribution/installation of computer programs from a source data processing system to at least one target data processing system based on at least two distribution/installation modes. (see Background and Summary of the Invention).

17. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Hassan Phillips whose telephone number is (571) 272-3940. The examiner can normally be reached on M-F 8:00am-5:00pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Zarni Maung can be reached on (571) 272-3939. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

HP/
11/16/05


ZARNI MAUNG
SUPERVISORY PATENT EXAMINER